

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

LAWRENCE LANE, On Behalf of Himself,
and All Others Similarly Situated,

Plaintiff,

vs.

No. CIV 06-1071 JB/ACT

BARBARA PAGE, SOSIMO S. PADILLA, JOE S. CHAVEZ, JOSIE CASTILLO, CHARLES V. PENA, GEORGIA BACA, TROY K. BENAVIDEZ, RAY MARES, JR., RANDOLPH M. SANCHEZ, WESTLAND DEVELOPMENT COMPANY, INC., SUNCAL COMPANIES GROUP, THE D.E. SHAW GROUP, D.E. SHAW & CO. L.P., D.E. SHAW REAL ESTATE PORTFOLIOS 1, LLC, (“DESCO REAL ESTATE”), D.E. SHAW & CO., LLC, D.E. SHAW & CO., INC., D.E. SHAW INVESTMENT GROUP, LLC, D.E. SHAW & CO. II, INC., GEORGE RIZK, ANNE DINNING, SCC NM Member LLC, SCC WESTLAND VENTURE LLC, WESTLAND HOLDCO, INC, SCC ACQUISITION CORP, SCC ACQUISITIONS INC, WESTLAND SPE GP, LLC, WESTLAND DEVCO, LP, WESTLAND DEVCO, LLC, and BARCLAYS CAPITAL REAL ESTATE INC.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiff’s Notice of Failure to Appear and Request for Leave to Subpoena Bruce Elieff for Deposition, filed February 9, 2011 (Doc. 313)(“Motion”). The Court held a hearing on February 10, 2011. The primary issue is whether the Court should grant Plaintiff Lawrence Lane leave to serve a subpoena on Bruce Elieff, Defendant SCC Acquisition Corp.’s most senior executive during the 2006 time period, requiring him to appear

for a deposition on a date during the week of February 21, 2011. Based on the parties' agreement at the February 10, 2011 hearing, the Court grants the Motion.

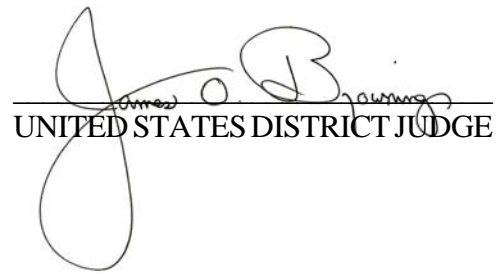
PROCEDURAL BACKGROUND

Lane moves the Court to grant him leave to serve a subpoena on Elieff, requiring him to appear for a deposition on a date during the week of February 21, 2011. At the February 10, 2011 hearing, Defendant SCC Acquisition Corp. ("SunCal") agreed to allow the Court to decide the Motion at the hearing without awaiting further briefing. SunCal represented that Elieff's failure to appear for his deposition was unexpected. SunCal proposed that it be allowed to contact Elieff and find a mutually agreeable date for the deposition. Upon finding a mutually agreeable date, Lane's counsel would then issue a subpoena. The Court proposed that SunCal be given three days to arrange a mutually agreeable date and that, if a date is not arranged in that period, Lane could serve a subpoena on Elieff, setting the deposition at Lane's convenience. All parties agreed to this proposal.

ANALYSIS

For the reasons stated on the record at the hearing, the Court grants SunCal three days from the February 10, 2011 hearing to contact Elieff and arrange a mutually agreeable date for the deposition. Once a mutually agreeable date is arranged, the Court grants Lane leave to issue a subpoena for Elieff for that date. If a mutually agreeable date is not arranged within three days of the hearing, Lane shall have leave to issue a subpoena for a date that is convenient for Lane.

IT IS ORDERED that the Court grants the request contained in the Plaintiff's Notice of Failure to Appear and Request for Leave to Subpoena Bruce Elieff for Deposition, filed February 9, 2011 (Doc. 313), as set forth in this Memorandum Opinion and Order.



UNITED STATES DISTRICT JUDGE

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